

No. 1263], and therefore, Peterson has sustained its burden entitling it to the entry of a Protective Order barring further examination pursuant to Plaintiffs' 30(b)(6) Notice.

ARGUMENT

A. Plaintiffs' Request for an Order Directing Peterson to Compile and Mathematically Manipulate Information Already Produced In Response to Prior Discovery is Improper

In their argument that Peterson did not properly prepare a designee to testify with regard to the annual number of growers, houses, and production of chickens and feed consumed at contract operations in the IRW, Plaintiffs concede that what they are really after is an Order directing Peterson to go through all of the records already produced to Plaintiffs and add up the information from the individual records, and summarize it by year. As Peterson explained through its corporate witness, this is not information that Peterson compiles in the course of its business, and thus Plaintiffs' request would require Peterson to create evidence that does not currently exist. [Dkt. 1263 at 4-7.] This is not a situation where Peterson is denying Plaintiffs information, the argument here is that Plaintiffs simply don't like how the information is provided.

Plaintiffs offer no authority to support any legal basis for placing such an extraordinary burden on Peterson other than cases that set forth the commonly accepted platitudes about a corporation's duty to prepare its witness. Federal Rule of Civil Procedure 30(b)(6) expressly provides that the outer bounds of a corporation's duty to prepare for a deposition is defined by what is "readily available." Plaintiffs would have the Court ignore this aspect of the Rule in order to achieve the results they seek. Notably, Plaintiffs do not dispute that they can pull and compile the information they seek from the raw data in the grower records, feed tickets and mortality reports Peterson produced many months ago. Hence the essence of the dispute is

whether they can force Peterson to compile and summarize this information in a format Plaintiffs desire for their litigation purposes, or whether they and their experts should do their own work. As the court in *Wilson v. Lakner, M.D.*, 228 F.R.D. 528 (D. Md. 2005) held, the duty of a corporation to marshal information for a 30(b)(6) deposition is the same as that expected in answering interrogatories. *Id.* at 528-29. Peterson has complied with this standard by explaining why it does not possess the summary information Plaintiffs seek, and explaining to them how they can discern it from the records already produced.

B. Simply Because Plaintiffs Refuse to Accept that Peterson Neither Owns Nor Controls the Growers' Litter is not Grounds for Finding the Corporation's Answers Inadequate

Plaintiffs continue to complain that Peterson has not testified to the amounts and locations where poultry litter has been land-applied in the IRW. Plaintiffs' base their sole argument in this regard on their contention that – because Peterson is legally liable for the litter – it should know how much is produced, and where it goes. In pursuing their motion to compel, Plaintiffs are asking the Court to (1) make a preliminary advisory ruling that Peterson is legally liable for how the growers manage their litter,¹ and (2) disregard Peterson's testimony that the growers handle their litter in accord with their state-approved Nutrient Managements Plans without direction from, oversight by, or reporting to Peterson. The simple fact that the evidence is not developing to conform to Plaintiffs' theory of the case is not grounds for accusing Peterson

¹ Plaintiffs continue to assert as a premise to their arguments that Peterson and the other Defendants are liable for how their independent contract poultry growers manage their litter. Not only is this a disputed issue for determination by the finder of fact, Plaintiffs face a steep climb given that no Oklahoma court has held that the exception stated in RESTATEMENT (SECOND) OF TORTS § 427B has been adopted into the state's jurisprudence. (Plaintiffs continue to cite to the Court's Order in the *City of Tulsa* case, but as the Court vacated its opinion, it is if it had never been rendered. *See Matter of Meekins*, 554 P.2d 872, 875 (Okla. Ct. Civ. App. 1976)(defining "to vacate"); *cf. Baugus v. Special Indemnity Fund*, 966 P.2d 801, 803 n.1 (Okla. Ct. Civ. App. 1998)(admonishing party for citing an unpublished opinion)).

of noncompliance with the Rules of Civil Procedure. When asked, Mr. Houtchins gave complete and honest answers and explained that the growers own the poultry litter, make their own decisions on management, and that the disposition of the litter was a matter between the growers and the regulators of the state in which they operate. [Dkt. 1263 at 8-9]. This is the evidence, which Plaintiffs cannot change through a motion to compel.

C. Plaintiffs Failed to Rebut Peterson's Showing That Its Representative Gave Full Answers to all Questions Within the Scope of the Notice

In its Response, Peterson cited the Court to the segments of Mr. Houtchins' testimony where he gave full and complete answers to every question Plaintiffs' counsel asked that was within the scope of the Topics detailed in the Notice. Plaintiffs' response to this showing was, again, to divert attention from their own conduct to make hay of Peterson's counsel's efforts to stop the abuse of his client.

Peterson is willing to rely on the Court's reading of the transcript to see that with regard to Plaintiffs' contentions that Mr. Houtchins failed to address the Topics in the Notice, the Emperor has no clothes. Peterson pointed out that Plaintiffs accused it of failing to prepare a witness on eight Topics, when the truth was that Plaintiffs failed to reserve any time to ask the designee on these Topics any questions. Plaintiffs failed to acknowledge this in their Response. Peterson explained that Plaintiffs' attempts to elicit binding testimony on the interpretation of statutes was an improper attempt to undermine Peterson's counsel's legal objections, and Peterson directed the Court to Plaintiffs' counsel own words to that effect. [Dkt. 1263 at 15.] Again, Plaintiff chose not to respond. Peterson applied the express language of the Topics in Plaintiffs' Notice to the portions of the examination where Plaintiffs claim obstruction to establish that each of these areas of inquiry was outside the scope of the Notice and appropriate only for one properly qualified under Fed. R. Evid. 702. [Dkt. 1263 at 15-20.] Once more,

Plaintiffs duck the issue by asserting that this wide array of technical concepts was encompassed within their quest to learn what Peterson knew “on various matters pertaining to poultry waste management.” [Dkt. 1285 at 7.] Plaintiffs’ argument lacks credibility. Asking a corporate witness about how many species of bacteria may be found in litter and what their fate may be in the environment has nothing to do with what the growers do in managing their litter.

Plaintiffs complain that Peterson is employing a strained interpretation of their Topics; quite the contrary. Plaintiffs were required to set forth in their Notice the Topics for examination “with reasonable particularity.” Fed. R. Civ. P. 30(b)(6). When Plaintiffs identified that they wanted to examine Peterson on, as they put it, “releases/discharge/run-off” from locations where poultry litter had been spread in the IRW, this is what Peterson prepared and designated a witness to testify about. Plaintiffs did not place Peterson on notice that they would inquire of technical articles and scientific concepts in the abstract, for if they had, Peterson would have moved for a protective order at the outset.² By failing to point the Court to the specific Topics in their Notice that would grant such a broad license, Plaintiffs’ Response continues to reflect that they do not recognize that the wording they chose for their Notice defined the outer bounds of the testimony Peterson was required to give. And as stated in Peterson’s Response, this is not a situation where the examiner allowed the corporate designee to step out of his representative role

² Plaintiffs’ Response offers no defense or explanation for Plaintiffs’ improper tactics of examining Mr. Houtchins on documents he had not seen, or that Plaintiffs could not substantiate they had produced in the litigation. Also, Plaintiffs make a number of arguments involving the *Poultry Water Quality Handbook*, and accuse Peterson’s counsel of incompetence. First, Mr. Houtchins testified that he had not seen the document. This is an accurate statement. Peterson did not produce the document, which was more than ten years old, as it apparently is no longer maintained in Peterson’s files. The copy employed by Plaintiffs’ counsel at the deposition came from the files of a poultry grower who had not had a contract with Peterson for some time. Notwithstanding Plaintiffs’ unprofessional personal attack, the record is clear that Peterson did not author the *Handbook*, as it was a compilation of articles prepared by other claimed experts addressing technical subjects which Peterson does not possess sufficient expertise to endorse or refute.

to answer questions individually. As is evident from Plaintiffs' arguments they continue to assert that the corporation should provide binding testimony on these divergent and unnoticed subjects. These tactics are not permitted under the federal rules, and therefore, Peterson respectfully requests the Court enter an order precluding such further examination.

CONCLUSION

Plaintiffs' response is completely lacking in grounds for continuing the deposition of Peterson's designee. Most importantly, Plaintiffs failed to rebut the showing from the deposition testimony of Mr. Houtchins, which demonstrated that he was prepared, and fully complied with his obligations under Rule 30(b)(6). Accordingly, Peterson respectfully requests the Court enter a Protective Order finding that Peterson that has met its obligations as to the 30(b)(6) deposition Notice issued by Plaintiffs, and further, precluding Plaintiffs from obtaining any further 30(b)(6) testimony from Peterson as to topics identified within that deposition notice.

Respectfully submitted,

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